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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

THE UNITED STATES,

Appellant,

vs.

EINSTEIN, WOLFF & CO.,

Appellees.

[No. 2215.]

TRANSCRIPT OF RECORD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

PRINTED UNDER THE DIRECTION OF THE CLERK.

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Know all men by these presents, that I, William H. Northup, am held and firmly bound unto the United States of America in the sum of Fifty Dollars, to be paid to the said United States of America; for the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally firmly by these presents. 1

Sealed with my seal, and dated the 17th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas, Einstein, Wolff & Co. have applied to the Circuit Court of the United States for the Southern District of New York, for a review of the questions of law and fact involved in certain decisions of the Board of United States General Appraisers, made upon the entry of certain merchandise imported by them per S. S. "La Champagne," Sep. 17/94. 136012. 2

Now, therefore, the condition of this obligation is such, that if the above named Einstein, Wolff & Co. shall prosecute said proceeding with effect and pay all damages and costs which shall be awarded against them therein if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect. 3

WM. H. NORTHUP. [SEAL]

Sealed and delivered and taken and acknowledged, this 17th day of June, 1895, before me,

[SEAL] JOHN K. MAXWELL,
Notary Public. No. 129.

4 UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

William H. Northup, being duly sworn, deposes and says that he does business in the Southern District of New York, in the City of New York ; that he is worth the sum of One Hundred Dollars, over and above all his just debts and liabilities.

WM. H. NORTHUP.

Sworn to this 17th day of June, 1895, before me, }

[SEAL] JOHN K. MAXWELL,
Notary Public. No. 129.

5

This bond is approved as to form and amount and sufficiency of surety.

Dated, New York, June 18, 1895.

[SEAL] E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed):—2215.—United States Circuit Court for the Southern District of New York.—In the Matter of the Application of Einstein, Wolff & Co., for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain Merchandise imported by them, per S. S. "La Champagne," Sept. 17/94.—Bond for Costs on Application for Review.—Curie, Smith & Mackie, Attorneys for Petitioners, 44 & 46 Exchange Place, New York City.—U. S. Circuit Court, Filed Jun. 18, 1895.—John A. Shields, Clerk.

6

United States Circuit Court, 7

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Application of EINSTEIN, WOLFF & Co., for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain Merchandise imported by them per S. S. "La Champagne;" Date of Entry, Sep. 17/94; Entry No. 136012. 8

To the Honorable the Circuit Court of the United States, for the Southern District of New York:

Your petitioners Einstein, Wolff & Co., being dissatisfied with a decision made on or about the 22d day of May, 1895, by the Board of General Appraisers designated by the Secretary of the Treasury, for and on duty at the Port of New York, reviewing and affirming the decision of the Collector of the Port of New York, as to the rate and amount 9 of duty chargeable on certain merchandise imported at said Port by your petitioners, as above specified, respectfully make application to the Court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of Cotton Cloth. The same was classified and assessed by said Collector for duty at the rate of 50 % *ad valorem*. Your petitioners being

10 dissatisfied with the said decision, gave notice to said Collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth the reasons for their objection thereto, claiming the said merchandise to be dutiable under the appropriate provision for cotton cloth on the facts as they exist herein, Paragraphs 252 to 256, inclusive, in Schedule "I" of the Tariff Act of August, 1894; or at 35 % *ad valorem* under said Schedule and Act, Paragraph 264.

Thereafter the said Board of General Appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said Collector in the premises.

11 And for the errors of law and fact in the decision of the said Board herein complained of, your petitioners say:

First.—That said Board of Appraisers erred in not finding as matters of fact:

(a) The number of threads contained in said merchandise to the square inch, counting the warp and filling.

(b) The number of square yards to the pound.

(c) The value per square yard.

(d) Whether bleached, dyed, colored, stained, painted or printed.

12 *Second.*—That the Board of Appraisers erred as matters of law:

(a) In failing to find the facts above set forth in relation to said merchandise.

(b) In overruling your petitioners' protest, and in not sustaining the same.

(c) In not holding that said merchandise was properly dutiable as cotton cloth under Schedule "I" of the Tariff Act of August, 1894, under the appropriate paragraph thereof, according to the facts as they exist herein as to the number of threads per square inch in said merchandise, number of square yards per pound, value per square

yard, and as to condition, whether bleached, dyed, 13
colored, stained, painted or printed.

(d) In not holding that said merchandise was dutiable at 35% *ad valorem* under said Schedule and Act, Paragraph 264.

(e) In not holding that a provision for cotton cloth as to the number of threads per square inch, number of ounces and value per square yard, was not a more specific provision for the merchandise in question than a provision for "articles embroidered by hand or machinery not specially provided for."

Accordingly, your petitioners respectfully pray the Court to order the said Board of General Appraisers to return to the Court the record and evi- 14
dence taken by the said Board, together with a certified statement of the facts involved in the above cases, and of its decision thereon ; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision, and to determine the questions of law and fact involved in the same.

Dated, New York, June 18, 1895.

EINSTEIN, WOLFF & Co.,
Petitioners.

By CURIE, SMITH & MACKIE,
Attorneys,
44 and 46 Exchange Place, 15
New York City.

(Endorsed):—2215.—United States Circuit Court for the Southern District of New York.—In the Matter of the Application of Einstein, Wolff & Co., for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain Merchandise imported by them per S. S. "La Champagne," Sep. 17/94.—Petition. —Curie, Smith & Mackie, Attorneys for Petitioners, 44 and 46 Exchange Place, New York City.—U. S. Circuit Court, Filed Jun. 12, 1895.—John A. Shields, Clerk.

16 At a Stated Term of the United States Circuit Court for the Southern District of New York, held at the United States Court and Post Office Building, in the City of New York, on the 18th day of June, 1895.

Present.—Hon. E. HENRY LACOMBE,
Circuit Judge.

In the Matter
of
The Application of EINSTEIN, WOLFF & Co., for a review of
17 the decision of the General Appraisers, as to the rates, &c., of duties on certain Merchandise imported by them per S. S. "La Champagne," Sept. 17/94. 136012.

Upon reading and filing the annexed petition of Einstein, Wolff & Co., importers of the merchandise therein described, and on motion of Curie, Smith & Mackie, Attorneys for said petitioners,

It is Ordered, that the Board of Appraisers at the Port of New York return to this Court the record and the evidence taken by them in each of the above entitled matters, together with a certified
18 statement of the facts involved in the case and their decision thereon.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed):—2215.—United States Circuit Court for the Southern District of New York.—In the Matter of the Application of Einstein, Wolff & Co., for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain Merchandise imported by them per S. S. "La Champagne," Sep. 17/94.—Summons to Return Record.—Curie, Smith & Mackie, Attorneys for Petitioners, 44 & 46 Exchange Place, New York City.—U. S. Circuit Court, Filed Jun. 18, 1895.—John A. Shields, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES 19

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Application of EINSTEIN, WOLFF & Co., for a review of the decision of the Board of General Appraisers, as to the rate, etc., of duty on certain Embroidered Cotton Cloths imported by them per S/S. "La Champagne," Sept. 18/94.	Suit No. 2215. Return of the Board of United States General Appraisers to the order of Hon. E. HENRY LACOMBE. Circuit Judge. 20 Dated, New York, July 9, 1895.

The Board of United States General Appraisers, sitting at New York, in response to the order of the Court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein as ascertained by them.

They state that a letter, hereto annexed, marked Exhibit "A," was received from the Collector of Customs at New York, submitting under the provisions of Section 14 of the Act of June 10th, 1890, 21 the protest hereto annexed, marked Exhibit "B," described as follows:

Colls. No.	Board. No.	Protestant.	Vessel.	Date of Entry.
15998.	77058-A.	Einstein, Wolff & Co.	"La Champagne."	Sep. 18/94.

On the 22nd of January, 1895, Charles Tyroler appeared before the Board as a witness and was examined in behalf of the importer. His testimony is hereto annexed, marked Exhibit "C." (Note also memorandum contained therein of admission of counsel for importer as to the character of the goods).

22 The sample referred to in the testimony is returned herewith, marked "Exhibit 1, 77058–A, January 22nd, 1895."

The Board having heretofore considered this subject in their decision known as G. A. 3065, a copy thereof is hereto annexed, marked Exhibit "D."

On the 22nd of May, 1895, the Board rendered their decision herein, a copy of which is hereto annexed, marked Exhibit "E."

Exhibit "A."

Custom House, Port of New York,
Collector's Office,
23 Nov. 21, 1894.

Hon. Board of U. S. Gen'l. Appraisers,
at the Port of New York.

Gentlemen:—

I submit the protest of Einstein, Wolff & Co., Nos. $\frac{77058}{15998}$ from the assessment of duty by this office at the rate of 50 % *ad valorem* on certain so-called "Cotton Cloth," tamboured or embroidered, imported by them in the "La Champagne," Sept. 18–94.

An inspection of the invoice shows that the merchandise consists of Embd. Dotted Swiss. It was returned by the Appraiser as "Cotton Embdy., 50 %." Duty was assessed thereon at the rate above
24 stated under the provisions of Par. 276 of the Act of Aug. 28–94. Note the provisions in said Par. 276 for embroideries and articles embroidered. Note also G. A. 2680, first finding.

I have to report that the claimants have complied with the requirements of Section 14 of the Act of June 10, 1890.

The Naval Officer concurs in the decision of this office.

The entry and invoices covered by the above protest are inclosed herewith.

Respectfully yours,

J. J. Couch,
(4 Inclosures.) Special Deputy Collector.

(Endorsed):—77058.—Port of New York, Collector's 25
Office, Nov. 21, 1894. Jas. T. Kilbreth, Collector.—Submitting Protest No. 15998 of Einstein, Wolff & Co.—4 papers inclosed.—48859 Po.—Office U. S. General Appraisers, New York. Received Nov. 23, 1894.

Exhibit "B."

New York, Oct. 26, 1893.

Hon. James T. Kilbreth,
Collector of Customs, New York.

Sir:—

We hereby protest against your decision, liquidation and assessment of duties as made by you on 26
our importations below mentioned, consisting of certain Bleached or Colored Cotton Cloth, tamboured or embroidered, or otherwise figured or ornamented, contained in the cases or packages marked and numbered as described on the entries and invoices thereof, to which for more certainty of description, reference is hereby had, claiming said goods to be dutiable under the provisions of Paragraphs 252 to 256 inclusive, Schedule "I," Tariff Act of August, 1894, according to the number of threads to the square inch, the number of square yards to the pound, and the value per square yard; 27
or,

Second: At no more than 35% under Paragraph 264 of said Schedule and Act as a manufacture of cotton n. o. p. f., and not at 50% *ad valorem* or as charged by you; and we give notice that we pay all other higher rates than is claimed above as the legal rate under compulsion, and to obtain possession of our goods. We claim that the duty exacted by you is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty.

Vessel.	From.	Date of Entry. 1894.	Entry No.	If W'hs. W. H. Bond.	Date of Liquidation. 1894.	Marks and Nos.
"La Champagne."	Havre.	Sept. 17.	136012.	C.	Oct. 16.	E. W. & Co. 10557. and others, as per invoices and entries.

EINSTEIN, WOLFF & Co.

By CURIE, SMITH & MACKIE,
Attorneys,
77058. 44 & 46 Exchange Place, N. Y.

(Endorsed):—15998.—Einstein, W. & Co. "Champagne."—(Cot. Cloth & Embroideries).—Vessel, c "La Champagne." Entry 1894, Sept. 18; Liq-ed 1894, Oct. 16; Protested 1894, Oct. 26.—Custom House, New York, Oct. 26, 1894, Received.

Exhibit "C."

BEFORE THE BOARD OF U. S. GENERAL APPRAISERS,
BOARD NO. 2.

In the Matter of the Protest of Einstein, Wolff & Co., 77058–A.

New York, January 22nd, 1895.

Present—

General Appraiser SOMERVILLE, Chairman.
General Appraiser HAM.
General Appraiser SHARPE.

FREDERICK W. BROOKS, Esq., for the Collector.

DAVID IVES MACKIE, Esq., for the Protestants.

JAMES A. RUSSELL, Stenographer.

CHARLES TYROLER, called as a witness, and being first duly sworn, testifies as follows.

By Mr. Mackie:

Q. What is your business? A. I have charge of the foreign department of Einstein, Wolff & Co.

Q. Are you familiar with their imported dotted swisses? A. Yes, sir.

Q. How long have you been with Einstein, Wolff 31
& Co.? A. About ten years.

Q. Are you familiar with the general line of goods they import? A. Yes, sir.

Q. When you are shown invoices of their goods can you produce samples? A. Yes, sir.

Q. Please look at invoice 10483, this case, and see if you find any embroidered dotted swisses described on that invoice? A. Yes, sir; in case 10,557.

Q. They are all the first part of that case, are they? A. Yes, sir.

Q. And all the goods invoiced on that page as embroidered? A. Yes, sir.

Q. Can you produce samples of those dotted 32
swisses which are invoiced as embroidered? A. I have a piece here (producing sample).

Same marked in evidence Exhibit 1, 77058–A, January 22nd, 1895.

Q. Now, this sample you have produced here, is this a sample of these very goods described on this importation? A. Yes, sir.

Q. Are they all like this sample? A. Of the same class of goods.

Q. How do they differ, if at all? A. In the dots and in the widths; some are wider than others.

Q. And some have more or less dots or different style dots? A. Yes, sir; different style dots. 33

Q. Any more dots than there are on this piece, or about the same number of dots? A. On some a few more and on some a few less.

Q. Are the goods all white? A. Yes, sir.

Q. And are they bleached? A. Yes, sir.

Q. How are the goods invoiced as far as the yard is concerned; are they invoiced by the square yard, or how? A. No, sir; by the running yard.

Q. Take that first item, 8001, can you state how many square yards there are to the running yard in those goods? Can you tell the number of square yards to the whole lot there? A. I can give it to

34 you on this one item, on 8004; not on the whole number, on one piece; a 20 1/2 yard piece.

Q. What would be the number of square yards there? A. Seventeen.

Q. Seventeen square yards to the piece there? A. Yes, sir.

Q. You cannot tell about the others? A. The others on the same average; take each piece and it would be about on some 17 square yards to the piece, because the yardage is pretty near all the same.

Q. Would the average of the whole lot there be 17 square yards to the piece? A. I guess it would; that would be pretty near to the average.

35 Q. What does that make the invoice value to the square yard? A. Well, this one item here, the value of that would be about 45 centimes per square yard.

Q. How many cents? A. About nine cents a square yard.

Q. How do the others run per square yard? A. Some 10 and some as high as 12; I don't believe there is anything there above 12.

Q. Can you pick out the ones that are between 10 and 12? A. 8007 is between 10 and 12; 8012 and perhaps 8014.

Q. The rest of them are between 9 and 10, are they? A. Yes, sir.

36 Q. Now, can you tell me the weight per square yard of those goods? A. About an ounce to the square yard.

Q. Have you weighed them yourself? A. Yes, sir.

Q. Where? A. I weighed them in the public stores.

Q. In the examiner's department? A. Yes, sir.

Q. On the examiner's scale? A. Yes, sir.

Q. And they weigh an ounce to the square yard? A. Yes, sir.

Q. How many threads to the square inch? A. 116 this counts.

Q. Are there more or less threads in the other patterns of which you have not produced samples? A. They run about the same. 37

By the Chairman:

Q. All between 100 and 150? A. Yes, sir.

By Mr. Mackie:

Q. You are positive of that, are you? A. Yes, sir.

Q. In the course of your business experience, have you been in the habit of counting goods of this character? A. Yes, sir.

By the Chairman:

Q. Did you count them by actual raveling, or with the glass? A. With the glass. 38

By Mr. Mackie:

Q. In counting them, did you count only the body of the goods, or did you count the dot? A. Just the body of the goods, the warp and the filling threads.

Q. Are you familiar with goods known in the trade as cotton embroidery? A. Yes, sir.

Q. What are they? A. Narrow goods, used for trimmings.

Q. Are the goods ever known as cotton embroidery in the trade? A. No, sir.

Q. Would they be shown to a man who asked to see a line of cotton embroidery? A. No, sir. 39

Mr. Mackie: It is admitted that the goods are embroidered.

40 ## Exhibit "D."

(16101—G. A. 3065.)

Tamboured Cotton Sash Cloth.

BEFORE THE U. S. GENERAL APPRAISERS AT NEW YORK, MAY 1, 1895.

In the Matter of the Protest 77417 *a*–16457, of F. Meyer, against the decision of the Collector of Customs at New York, as to the rate and amount of duties chargeable on certain merchandise, imported per "La Touraine," entered September 25, 1894.

41 ## Opinion by Ham, General Appraiser.

The merchandise in this case consists of tamboured embroidered cotton sashes in the piece, assessed for duty at 50 per cent. *ad valorem* under the provision in Paragraph 276 of the Act of August 28, 1894, for "tamboured articles and articles embroidered by hand or machinery," but claimed to be entitled to entry under the provisions of Paragraphs 252 to 257 inclusive, of said Act, at the rate or rates as therein provided, according to count of threads, weight, condition, value, etc.

The case was docketed for hearing on January 22, 1895. There was an appearance, and the case was submitted for decision with ten days to make
42 proof of samples, etc. On January 31, 1895, samples of the importation were submitted and proved, and expert testimony was offered in regard to the technical and commercial character of the merchandise in controversy. An inspection of the samples in the record shows them to consist of webs or pieces of white woven cloth, containing about 24 yards each. Some of them are tamboured, others embroidered, and still others both tamboured and embroidered. It is admitted by appellant that the embroidering and tambouring ornamentation was put upon the fabrics after they left the loom.

To the question put by counsel for appellant to his own witness, "Are the goods represented by the samples just as they came from the loom, or did they have some finish put on them after leaving the loom?" witness answered: "My answer is that they don't represent the article as it came from the loom, but that the ornamentation was put on afterwards by the machine." And in answer to the question by the General Appraiser, "All these samples, as I understand you to say, were either tamboured or embroidered, or both?" he answered, "Yes, sir." And to the further question, "And this tambouring or embroidery is a different or additional process of manufacture to the woven fabric?" he answered, "Yes, sir." 43 44

The Collector classified the merchandise under the provision in Paragraph 276 of the Tariff Act now in force, for "tamboured articles and articles embroidered by hand or machinery."

Paragraph 373 of the Act of October 1, 1890, which corresponds generally with said Paragraph 276, is in part as follows: * * * "Lace window curtains *and other similar* tamboured articles, and articles embroidered by hand or machinery * * * of cotton," etc. In Paragraph 276 of the Act of August 28, 1894, the words we have italicised, "*and other similar*," are omitted altogether, freeing the provision for "tamboured articles" from the qualification attached to it in Paragraph 373 of the Act of 1890, thus converting a qualified provision into a definite and specific one. 45

Appellant's claim is made under the countable paragraphs of the statute, 252, 256, by virtue of the defining clause contained in Paragraph 257, which latter clause is as follows:

> The term cotton cloth or cloth whenever used in the foregoing paragraphs of this schedule shall be held to include all woven fabrics of cotton in the piece, whether figured, fancy or plain, *not specially provided for* in this Act, the warp and filling threads of which can be counted by unraveling or other practicable means.

46 The so-called countable clauses are a permanent feature of all our tariff acts. They constituted part of the Act of March 3, 1883; and on October 24, 1889, the United States Circuit Court for the Southern District of New York (Lacombe, *J.*), held—

(1) That the provisions of Schedule I, Act of March 3, 1883, for countable cottons necessarily import that the cloth should be homogeneous, so that the number of threads per square inch would not differ in different parts of the fabric.

(2) That where a cotton cloth had figures woven in it upon the loom at the same time with the fabric itself the count must include the threads of the
47 figure as well as the threads of the groundwork; and

(3) Following these principles, that Madras curtain goods made of cotton, with figures woven in them in the loom at the same time with the fabric itself, were dutiable, not under the countable clauses of Schedule I of said Act, but under the general provision for manufactures of cotton not specially provided for. (Robertson *v.* Hedden, 40 Fed. Rep., 322).

In the course of his opinion in the case the learned judge said:

The contention of the defendant that the threads in the so-called groundwork only are to be included
48 in the count, the figures being regarded as a merely incidental ornament—as something added to the cloth—seems unsound, in view of the testimony which shows, without contradiction, that the figures (which in some of these samples cover fully more than half the surface of the goods) are woven upon the loom at the same time as the fabric itself. They are, therefore, just as much cotton cloth as the groundwork is, and the threads composing them as much entitled to a count. We then have a fabric which is, indeed, a cotton cloth, but which can not, as a whole, be fairly classified by the use of the test which Congress has provided as the sole one for classifying such cloth, and as it can not, therefore, be put in any one of the classes of cotton cloth

on which duty is laid as such, it must fall under 49
the general clause.

This ruling was reversed February 5, 1894, by the United States Supreme Court, Hedden *v.* Robertson, (14 Sup. Ct. R., 434); and by the United States Circuit Court of Appeals for the Second Circuit (following the Supreme Court) April 19, 1894 (United States *v.* Albert *et al.*, 60 Fed. R., 1012).

These variant court decisions show that the countable clauses of the Act of 1883, which were reproduced in the Act of 1890, were obscure, and accordingly they explain the motive for the enactment in the Act of August 28, 1894, of Paragraph 257 of the cotton schedule defining the meaning, to a certain extent, of the countable clauses which 50
form part of the cotton schedule of that Act.

There is an established rule of statutory construction under these circumstances. It is necessary to consider, (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy the Legislature has appointed; and (4) the reason of the remedy. According to another authority the true meaning "is to be found, not merely from the words of the Act but from the cause and the necessity of its being made, from a comparison of its several parts, and from extraneous circumstances, or by an examination of and comparison of the doubtful words with the context 51
of the law, considering its reason and spirit, and the inducing cause of its enactment. The true meaning of any passage is to be found not merely in the words of that passage, but in comparing it with every other part of the law, ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circumstances which the Legislature had in view, and what were the cause and occasion of the passage of the Act, and the purpose intended to be accomplished by it in the light of the circumstances at the time and the

52 necessity of its enactment." (Endlich on the interpretation of Statutes, paragraph 27, and cases cited in footnotes.)

In the decision *in re* Hedden (reported in Vol. 40, Fed. Rep., p. 322), the Court argued that the threads in the figures overlaying certain woven cotton cloth known as Madras mull, and produced in the loom during the process of weaving, are just as much cotton cloth as the groundwork is, and the threads composing them as much entitled to a count. And proceeding, the Court said:

"We then have a fabric which is indeed a cotton cloth, but which cannot as a whole be fairly classified by the use of the test which Congress has
53 provided as the sole one for classifying such cloth."

That is to say, the count of warp and filling threads, and accordingly held that it must fall under the general clause.

It follows, we think, that the purpose of Congress in enacting Paragraph 257 in the Act of August 28, 1894, was not to enlarge the scope of the countable clauses of the cotton schedule, but to confine and limit the process of thread counting to the warp and filling threads of woven cotton fabrics, and so fix their classification under the countable clauses, on such count of such threads, without regard to the threads composing the woven figures on the surface of the cloth.

54 The phrase "whether figured, fancy or plain," following the words "all woven fabrics of cotton in the piece," in Paragraph 257 relates, we think, to the nature of the weave—that is to say, its intent is to include in the countable clauses all woven fabrics of cotton in the piece whether the weave is figured, fancy or plain. And this view is supported by a further circumstance. Down to the time of the enactment of the tariff law now in force, the so-called countable cotton clauses stood unrelated to other paragraphs of the several Acts; that is to say, they did not contain the words of limitation "not otherwise provided for." These

words constitute a strict limitation. (Z. & L. 55
Chemical Co. *v* Magone, 37 Fed. Rep., 776; Arthur's Executors *v.* Victor *et al.*, 127 U. S., 572.)

In the defining paragraph under consideration the qualifying provision is introduced, so that if it should appear that both Paragraph 276 and Paragraphs 252–257 apply to the articles in controversy it would remain merely to consider which provision constitutes the more specific designation. But we are of the opinion that this question does not arise here. If our analysis of Paragraph 257 is correct, neither tamboured nor embroidered articles are provided for therein. As already observed, Paragraph 276 of the Act of August 28, 1894, is in large part a reproduction of Paragraph 373 of the Act of 56
October 1, 1890, but there is an important change in it which concerns us in this discussion. Said Paragraph 373 is in part as follows:

"Lace window curtains, *and other similar* tamboured articles, and articles embroidered by hand or machinery."

The corresponding part of Paragraph 276 is as follows: "Lace window curtains, tamboured articles, and articles embroidered by hand or machinery," the words "and other similar" being omitted in the latter statute. This omission of the assimilating passage broadens the provisions for tamboured articles, making it comprehensive enough to include anything that is tamboured. 57
But if it be claimed that the articles in question are provided for both in Paragraph 276, and Paragraphs 252–256 by virtue of Paragraph 257, the answer is obvious and conclusive, namely, that the language "tamboured articles, and articles embroidered by hand or machinery," in Paragraph 276 more specifically describes them than does the language of Paragraph 257. For, the descriptive words "figured, fancy or plain," in Paragraph 257, if wrested from what we regard as their true import, relate to a great variety of styles of ornamentation, whereas the language of Paragraph 276,

58 "tamboured articles, and articles embroidered by hand or machinery" is definite and precise. To paraphrase the statute: All woven fabrics of cotton in the piece, whether figured, fancy or plain, shall pay duty under the provisions of Paragraphs 252–256, but if it shall appear that such woven fabrics are tamboured articles or embroidered articles, they shall pay duty under the specific provision for such articles in Paragraph 276.

We find as facts—

(1) That the merchandise consists of cotton-woven fabrics in the piece.

(2) That they are articles tamboured or embroid-
59 ered or tamboured and embroidered.

(3) That the tambouring and embroidery is an additional process of manufacture applied to the fabrics after they leave the loom.

(4) That the samples in the record are true samples of the merchandise in controversy.

The protest is overruled.

60

Exhibit "E."

61

Not for Publication.

BEFORE THE U. S. GENERAL APPRAISERS AT NEW YORK, MAY 22, 1895.

In the Matter of the Protest 77058-A/15998 of Einstein, Wolff & Company, against the decision of the Collector of Customs at New York, as to the rate and amount of duties chargeable on certain Embroidered Cotton Cloth, imported per "La Champagne," and entered September 18th, 1894.

Opinion by Ham, G. A.

The merchandise in this case consists of cotton cloth, embroidered, commonly known as Dotted Swisses, assessed for duty at 50% *ad valorem* under the provision for articles embroidered by hand or machinery in Paragraph 276 of the Act of August 28th, 1894, but claimed to be entitled to entry under the provisions of Paragraphs 252 to 256, inclusive, of said Act, according to the number of threads per square inch, the number of square yards to the pound and the value per square yard, and alternatively at 35% *ad valorem* under Paragraph 264 of said Act as manufactures of cotton not otherwise provided for.

62

The case is submitted on the record and expert testimony as to the nature of the merchandise and its technical name. It is admitted by the appellants that the merchandise in question is embroidered. The case is similar to that covered by the decision in the case decided by the Board May 1, 1895, wherein F. Meyer was the appellant (not yet published). On the authority of that decision the protest herein is overruled on all points.

63

(Signed) CHARLES H. HAM,
GEORGE H. SHARPE,
GEO. C. TICHENOR,
Board of U. S. General Appraisers.

3 enclosures.

Entry and invoice returned herewith.

Protest received with Collector's letter of Nov. 21, 1894.

64 And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other Exhibits hereto attached.

H. M. Somerville,
Charles H. Ham,
Geo. C. Tichenor,
Board of U. S. General Appraisers.

(Endorsed):—No. 2215.—U. S. Circuit Court, South-
65 ern District of New York.—In the Matter of the Application of Einstein, Wolff & Co., for a review of the decision of the Board of U. S. General Appraisers, as to the rate and amount of duty on certain imported Merchandise.—Return of the Board of U. S. General Appraisers.—U. S. Circuit Court, Filed Jul. 10, 1895.—John A. Shields, Clerk.

66

UNITED STATES CIRCUIT COURT, 67

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Application of EINSTEIN, WOLFF & Co., for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain Merchandise imported by them per S. S. "La Champagne," Sept. 17/94.	No. 2215.

68

To the Honorable the Circuit Court of the United States for the Southern District of New York:

Your petitioners, Einstein, Wolff & Co., respectfully represent:

First.—That a return from the Board of United States General Appraisers in the above entitled matter, was filed in the office of the Clerk of this Court on the 10th day of July, 1895.

Second.—That your petitioners desire to present further evidence in the above entitled matter.

69

Wherefore, your petitioners pray that an order be made referring said matter to one of the General Appraisers, to take and return to said Court such further evidence as may be offered.

Dated, July 27, 1895.

EINSTEIN, WOLFF & Co.,
Petitioners.

CURIE, SMITH & MACKIE,
Attys.

70 Upon reading and filing the foregoing petition of Einstein, Wolff & Co., and on motion of Curie, Smith & Mackie, Attorneys for said petitioners,

It is ordered, that the above entitled matter be and the same hereby is referred to General Appraiser George H. Sharpe, to take and return to this Court such further evidence as may be offered in said matter.

Dated, July 27, 1895.

E. HENRY LACOMBE,
U. S. Circuit Judge.

71 (Endorsed):—No. 2215.—United States Circuit Court, for the Southern District of New York. —In the Matter of the Application of Einstein, Wolff & Co., for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain Merchandise imported by them per S. S. "La Champagne," Sept. 17/94. —Petition and Order for Further Evidence.— Curie, Smith & Mackie, Attorneys for Petitioners, 44 & 46 Exchange Place, New York City. —U. S. Circuit Court, Filed Jul. 27, 1895.—John A. Shields, Clerk.

72

UNITED STATES CIRCUIT COURT, 73

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Application of EINSTEIN, WOLFF & Co., as to certain Merchandise imported by them per S. S. "La Champagne," September 17, 1894.	No. 2215.

74

To the Circuit Court of the United States for the Southern District of New York:

The undersigned, a General Appraiser under the Act of June 10th, 1890, to whom it was referred by this Honorable Court, by an order made July 27, 1895, to take further evidence in the above-entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated, New York, Feb. 27th, 1896.

GEORGE H. SHARPE,
United States General Appraiser,
as an Officer of the Court.

75

76 UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Application of EINSTEIN, WOLFF & Co., for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain Merchandise imported by them per S. S. "La Champagne," September 17, 1894.
77 } No. 2215.

It is hereby stipulated between the Importers, appellants herein, and the Collector of the Port of New York, appellee herein:

First.—That the term embroideries as used and understood in the trade and commerce of the United States on and prior to the twenty-seventh day of August, 1894, did not cover, apply to, or include merchandise of the kind or character involved in this case.

Second.—That on and prior to the twenty-seventh day of August, 1894, there were known and dealt
78 in in the trade and commerce of this country figured woven fabrics of cotton in the piece and fancy woven fabrics of cotton in the piece, the figures or fancy designs on which were made by the shuttle in the process of weaving the cloth, and which did not exist as plain cloth before such figures or fancy effects were made.

Dated, New York, Feb. 24th, 1896.

CURIE, SMITH & MACKIE,
Attorneys for Importers.

WALLACE MACFARLANE,
U. S. Attorney,
for Collector and U. S.

(Endorsed):—United States Circuit Court, Southern District of New York.—In the Matter of Certain Merchandise imported by Einstein, Wolff & Co.—No. 2215.—Further Evidence.—U. S. Circuit Court, Filed Feb. 27, 1896.—John A. Shields, Clerk. 79

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

EINSTEIN, WOLFF & CO., vs. UNITED STATES.	No. 2215. 80

Appeal by the importers from a decision of the Board of General Appraisers which sustained the classification by the Collector of the importations in question.

Decision.

TOWNSEND, *J.* (Orally).—The merchandise in controversy, commonly known as dotted Swisses, is cotton cloth on which after it has been woven, dots have been embroidered by machinery. The 81
single question is whether they are dutiable as cotton cloth under the countable thread clauses of the Act of August 28, 1894, as was claimed by the importer, or as articles embroidered by machinery composed of cotton not specially provided for under Paragraph 276 of said Act, as classified for duty by the Collector. From the decision of the Board of General Appraisers affirming said classification the importer appeals.

It is stipulated that on and prior to August 27, 1894, the term embroideries did not apply to said merchandise, and that on and prior to said date

82 merchandise was commercially known and dealt in similar to that in controversy on which such designs were placed in the process of weaving.

If this were an original question I should be inclined to adopt the construction contended for by the United States Attorney. But I have been unable to so distinguish the case as to relieve it from the operation of the rule laid down in Hedden *vs.* Robertson, (151 U. S., 520), and followed by the Circuit Court of Appeals in U. S. *vs.* Albert, (60 Fed. Rep. 1012).

The decision of the Board of General Appraisers is therefore reversed.

83 W. WICKHAM SMITH, for the Importers.

J. T. VAN RENSSELAER, Asst. U. S. Atty., for the United States.

(Endorsed):—No. 2215.—United States Circuit Court, Southern District of New York.—Einstein, Wolff & Co. v. United States.—Decision, Townsend, *J.*—U. S. Circuit Court, Filed Mar. 13, 1896.—John A Shields, Clerk.

84

At a Stated Term of the Circuit Court 85
of the United States of America, for the Southern District of New York, held at the United States Circuit Court Rooms in the Post Office Building, in the City of New York, on the 20th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

Present.—The Hon. WM. K. TOWNSEND,
Judge.

In re Certain Merchandise imported by EINSTEIN, WOLFF & Co., per S. S. "La Champagne," Sept. 17, 1894.	No. 2215.	86

The above cause coming on for hearing and determination before this Court on the application of the above-named importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved 87
therein, together with their decision thereon, and the further evidence taken pursuant to the order of this Court.

Now, after hearing James T. Van Rensselaer, Esq., Assistant U. S. Attorney, on behalf of the Collector, for affirmance, and W. Wickham Smith, Esq., Counsel for the said importers, for reversal; on motion of Curie, Smith & Mackie, Attorneys for importers,

It is ordered, adjudged and decreed that there was error in said proceedings before said Board of

88 General Appraisers, and that their decision be and the same hereby is in all things reversed.

And it is further adjudged and decreed that said merchandise was properly dutiable as cotton cloth under Paragraphs 252 to 256 inclusive, Schedule "I," Tariff Act of August, 1894, according to the number of threads per square inch and value and weight per square yard.

WM. K. TOWNSEND,
Judge.

Assented to as to form.

WALLACE MACFARLANE,
89 U. S. Attorney,
for the Collector and the U. S.

(Endorsed):—No. 2215.—United States Circuit Court, Southern District of New York.—In re Certain Merchandise imported by Einstein, Wolff & Co., per S. S. "La Champagne," Sep. 17/94.—Order of Reversal.—Curie, Smith & Mackie, Attys. for Importers, No. 46 Exchange Place, N. Y. City.—U. S. Circuit Court, Filed Mar. 21, 1896.—John A. Shields, Clerk.

90

U. S. CIRCUIT COURT OF APPEALS 91

FOR THE SECOND CIRCUIT.

THE UNITED STATES, Appellant, vs. EINSTEIN, WOLFF & Co., Appellees.	Suit No. 2215.

Assignment of Errors.

The United States, appellant, hereby assigns 92
error to the judgment of the U. S. Circuit Court for the Southern District of New York, as follows:

I. In that it ordered, adjudged and decreed that the decision of the Board of General Appraisers be in all things reversed.

II. In that it ordered, adjudged and decreed that the merchandise in suit was properly dutiable as cotton cloth under Paragraphs 252 to 256 inclusive, of Schedule I. of the Tariff Act of August, 1894, according to the number of threads per square inch and value and weight per square yard.

III. In that it did not order, adjudge and decree 93
an affirmance of the decision of said Board of General Appraisers.

Dated, April 13, 1896.

WALLACE MACFARLANE,
United States Attorney,
Attorney for Appellant.

(Endorsed):—"A," Suit No. 2215.—U. S. Circuit Court of Appeals for the Second Circuit.—The United States, Appellant, vs. Einstein, Wolff & Co., Appellees.—Assignment of Errors.—Wallace Macfarlane, United States Attorney, Attorney for Collector.—U. S. Circuit Court, Filed Apr. 13, 1896.—John A. Shields, Clerk.

94 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, Appellant, vs. EINSTEIN, WOLFF & Co., Appellees.	"A," Suit No. 2215.

95

Please take notice, that the undersigned, on behalf of the Collector of the Port of New York and on the part of the United States, hereby appeals from the decision of this Court rendered herein and entered on the 21st day of March, 1896, to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, April 13th, 1896.

Yours, etc.,

WALLACE MACFARLANE,
U. S. Attorney
For the Southern District of N. Y.,
96 Room 50, Post Office Building,
New York City.

To

JOHN A. SHIELDS, Esq.,
Clerk.

CURIE, SMITH & MACKIE, Esqs.,
Attorneys for Importers.

(Endorsed):—"A," Suit No. 2215.—U. S. Circuit Court, Southern District of New York.—The United States of America, Appellant, vs. Einstein, Wolff & Co., Appellees.—Notice of Ap-

peal.—Wallace Macfarlane, U. S. Attorney.— 97
To Curie, Smith & Mackie, Esqs., Attorneys for Appellees.—Due service of a copy of the within Notice of Appeal is hereby admitted. Dated, New York, April 14, 1896.—Curie, Smith & Mackie, Attorneys for Appellees.— U. S. Circuit Court, Filed Apr. 15, 1896.—John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

98

THE UNITED STATES OF AMERICA, Appellant, vs. EINSTEIN, WOLFF & Co., Appellees.	"A," Suit No. 2215.

To the United States Circuit Court of Appeals for the Second Circuit:

99
The Attorney General of the United States hereby applies for the allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit, from the decision and judgment of the U. S. Circuit Court rendered herein and entered on the 21st day of March, 1896.

Dated, New York, April 13, 1896.

JUDSON HARMON,
Attorney General.

per WALLACE MACFARLANE,
U. S. Attorney.

100 The foregoing application is granted and appeal allowed.

Dated, New York, April 13th, 1896.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court
of Appeals for the Second Circuit.

(Endorsed):—"A," Suit No. 2215.—U. S. Circuit Court of Appeals for the Second Circuit.—The United States of America, Appellant, vs. Einstein, Wolff & Co., Appellees.—Application for and Allowance of Appeal.—Wallace Macfarlane, U. S. Attorney.—To Curie, Smith & Mackie, Esqs., Attorneys for Appellees.—Due
101 Service of a copy of the within is hereby admitted. Dated, New York, April 14, 1896. Curie, Smith & Mackie, Attorneys for Appellees.—U. S. Circuit Court, Filed Apr. 15, 1896. —John A. Shields, Clerk.

102

UNITED STATES OF AMERICA, *ss.* 103

To EINSTEIN, WOLFF & Co., Importers:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, on the 11th day of May, 1896, pursuant to an appeal on the part of the United States, filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled "The United States of America, Appellant, vs. Einstein, Wolff & Co., Appellees, 2215," to show cause, if any there be, why the decision of the U. S. Circuit Court, in the said appeal mentioned, should not be reversed, 104
modified or corrected, and speedy justice should not be done in that behalf.

Given under my hand, at the City of New York, in the Southern District of New York, on the 13th day of April, 1896.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court
of Appeals for the Second Circuit.

WALLACE MACFARLANE,
U. S. Attorney,
On behalf of the United States,
Appellant. 105

(Endorsed):—"A," Suit No. 2215.—U. S. Circuit Court of Appeals for the Second Circuit.—The United States of America, Appellant, vs. Einstein, Wolff & Co., Appellees.—Citation.—Wallace Macfarlane, U. S. Attorney.—Due service of a copy of the within Citation is hereby admitted. Dated, New York, April 14th, 1896. Curie, Smith & Mackie, Attorneys for Appellees.—To Curie, Smith & Mackie, Esqs., Attorneys for Appellees.—U. S. Circuit Court, Filed Apr. 15, 1896.—John A. Shields, Clerk.

106 UNITED STATES OF AMERICA, }
Southern District of New York. } *ss.*

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to thirty-three inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of The United States, Appellant, against Einstein, Wolff & Company, Appellees, as the same remain of record and on file in my office.

In Testimony whereof, I have caused the
107 seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the
[SEAL] Second Circuit, this eleventh day of May, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and twentieth.

JOHN A. SHIELDS,
Clerk.

IN THE

Supreme Court of the United States.

THE UNITED STATES,
Appellant,

vs.

EINSTEIN, WOLFF & CO.,
Appellee.

Application for a Writ of Certiorari to review a Judgment of the Circuit Court of Appeals for the Second Circuit.

CHARLES CURIE,
W. WICKHAM SMITH,
DAVID IVES MACKIE,
Attorneys for Petitioners.

C. G. Burgoyne, Walker and Centre Streets, N. Y.—1897.

In the Supreme Court of the United States

THE UNITED STATES,
Appellant,

vs.

EINSTEIN, WOLFF & CO.,
Appellee.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

On behalf of the importers above named the undersigned respectfully pray for a writ of certiorari to require the above-entitled cause to be certified to this Court for review and determination pursuant to the provisions of Section 6 of the act entitled "An Act to establish Circuit Courts of Appeals, etc.," approved March 3d, 1891.

Statement of Facts.

On September 17, 1894, the firm of Einstein, Wolff & Co. imported into the United States, per steamship "La Champagne," and entered at the custom house at the Port of New York, certain cotton cloth. The cloth was a white cotton cloth in the piece, upon which small dots about one-eighth of an inch in diameter and an inch or more apart had been embroidered by an embroidery machine. The cloth thus made is commonly known as Dotted Swiss. The cloth had not been made up into

any particular article, but was in the piece. Similar cloths, also known as Dotted Swisses, are well known in commerce in which the dot is produced in the process of weaving the cloth by means of an attachment to the loom known as a Jacquard attachment. The cloth in question was bleached, and contained between 100 and 150 threads per square inch. The term "embroideries" as used in trade and commerce at the time of the passage of the act did not cover or include goods of this character (see Stipulation, Rec., fol. 77, and Opinion of Circuit Court of Appeals, par. 3).

Upon this merchandise the Collector assessed a duty of 50 per cent. *ad valorem*, under paragraph 276, Sch. J, of the Tariff Act of August 28th, 1894. The importer protested, claiming that the article was dutiable as cotton cloth under paragraph 254, Schedule "I." of the same act.

Tariff Provisions.

PAR. 254. Cotton cloth, not bleached, dyed, colored, stained, painted or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourth cents per square yard; if bleached, and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; if dyed, colored,

stained, painted or printed, and not exceeding four square yards to the pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted or printed, valued at over nine cents per square yard, thirty per centum ad valorem; bleached, valued at over eleven cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected and paid a duty of thirty-five per centum ad valorem.

PAR. 257. The term cotton cloth, or cloth, wherever used in the foregoing paragraphs of this schedule, shall be held to include all woven fabrics of cotton in the piece, whether figured, fancy or plain, not specially provided for in this Act, the warp and filling threads of which can be counted by unraveling or other practicable means.

PAR. 276. Laces, edgings, nettings and veilings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, and articles made wholly or in part of lace, rufflings, tuckings, or ruchings, all of the above named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them, is the component material of chief value, not specially provided for in this Act, fifty per centum ad valorem.

History of the Case.

The Board of General Appraisers overruled the importers' protest and sustained the action of the Collector. Their decision will be found in the record (fols. 61-65). This decision refers to another more voluminous decision, which will also be found in the record (fols. 40–59). The importers appealed from this decision to the Circuit Court pursuant to the provisions of Section 15 of the Customs Administrative Act of June 10th, 1890 (26 U. S. Stat at Large, p. 131). The *Circuit Court reversed* the decision of the Board of General Appraisers, holding that *decision to be inconsistent with the principles laid down by this Court in the case of Hedden vs. Robertson, 151 U. S., 520.* Its brief memorandum opinion will be found in the record (fols. 80–82). From this decision the Attorney-General appealed (fols. 97, 99) to the U. S. Circuit Court of Appeals for the Second Circuit. That Court reversed the decision of the Circuit Court and affirmed that of the Board of General Appraisers. The opinion of the Court of Appeals is annexed to the certified copy of the record herein, and is reported in 78 Federal Reporter, page 797.

Importance of Issue.

A proper determination of the question involved in this case is of interest to all importers of this class of merchandise throughout the United States. A very large number of protests on behalf of various merchants relating to this same subject matter are pending at the Port of New York and doubtless at other ports. While it is impracticable to make any accurate statement of the amount involved it is safe to say that many thousands of dollars depend upon the solution of this question.

Moreover the determination of the question whether the Circuit Court of Appeals is right in the limitations and restrictions it has placed upon the opinion of this Court in the case of Hedden vs. Robertson, *supra*, is one not only of importance under the existing tariff but is sure to be important in the interpretation of future tariffs.

For these reasons and for the reason that the decision now sought to be reviewed seems to be inconsistent with the decision of this Court in the Robertson case, it is hoped that the Court will issue a writ of *certiorari* in this case so that importers may have the benefit of an authoritative interpretation of the Robertson case.

Argument.

I. As stated by the Circuit Court of Appeals in its opinion, paragraph 4, the merchandise is concededly woven cotton cloth in the piece. As such it is provided for *eo nomine* in paragraph 254. While it is, of course, in the broadest sense of the term an article, and (being admittedly embroidered) therefore an embroidered article, it is a question whether the term articles as used in paragraph 276 in the phrase "articles embroidered" was intended to be used not in the broadest sense, but to be restricted to articles made up out of cloth, such as tidies, table covers, caps, aprons and other articles of wearing apparel. But even if the term "embroidered articles" in paragraph 276 can be held to apply to goods in the piece, that provision is only for embroidered articles *not specially provided for*, and cotton cloth is specially provided for. The case is entirely parallel with that of Robertson vs. Glendinning, 132 U. S., 158, in which this Court held that, where handkerchiefs were provided for by name, a provision for "manufactures of linen, if

embroidered," could not be held applicable to them, even though the handkerchiefs were in fact embroidered. The term cotton cloth is a specific denominative term, and the case falls under the well-settled principle that, where an article is specially provided for, general terms in the same act which would otherwise include it are not applicable to it (Arthur vs. Lahey, 96 U. S., 112.)

The reasoning followed by the Circuit Court of Appeals in this case is in direct conflict with the principle of the Glendinning case, and with the case of Arthur vs. Lahey and innumerable others in this Court. The learned Court say: "It seems most reasonable that neither paragraph was intended to include the goods which had been classified in the other, and that the intent in paragraph 257 was only to describe as woven cotton cloth that which is plain, figured or fancifully woven." Like reasoning applied to the Glendinning case would have required the Court to hold that the provision for handkerchiefs was intended to cover only such handkerchiefs as were not embroidered. Like reasoning applied to the tariff of 1894 would require the Court to hold that collars, cuffs and shirts provied for *eo nomine* in paragraph 275 would, if embroidered, be taken out of the category of collars, cuffs and shirts and be assessable under the provision of paragraph 276 for articles embroidered. For it might be said paragraph 275 was intended to provide for collars, cuffs and shirts not embroidered, and paragraph 276 for all articles, including collars, cuffs and shirts, if embroidered. The same reasoning would take all embroidered wearing apparel composed of vegetable fiber out of the category covered by paragraph 258, providing for "articles of wearing apparel of every description," and make it dutiable under paragraph 276 as articles embroidered. This would be not only in conflict with the decision of this Court in the Glendinning case, but with the decisions of the very Court by which this decision was rendered (see Boyd vs. U. S., 14 U. S. App., 94.

II. The decision of the Court of Appeals in this case is in direct conflict with the opinion of this Court in Hedden vs. Robertson, 151 U. S., 520.

In that case the following propositions were laid down by this Court:

"We have no authority, where the duty is thus specifically declared, to make an exception based upon *something that might be added to the cloth in the way of figures or patterns placed upon the groundwork of the fabric. The groundwork being cotton cloth*, within the terms and provisions of the statute, and the threads thereof being countable, the goods were dutiable, by the express language of the statute, at the rate which was exacted by the collector from the defendant in error."

"In other words, *the ornamentation placed upon the groundwork of the fabric does not change its character as cotton cloth*, subject to the countable clause of the statute, and dutiable under paragraphs 319, 320 and 321 of the Act of 1883."

There is no suggestion in the opinion of this Court, from which the above quotations are made, that the conclusion reached was based upon the fact that the figures in the cloth were produced in the process of weaving the cloth, and not added by an embroidery machine after the plain cloth had been woven.

There would be no reason or sense in such a distinction. The same dots or figures which in one piece of Dotted Swiss are produced by a Jacquard attachment in the process of weaving, may, in another piece of Dotted Swiss, be produced by embroidering on the plain cloth. The two pieces of goods may so closely resemble each other as to be scarcely distinguishable by an expert. Why should one pay 35 per cent. and the other 50 per cent? Countable cotton cloth is by law subject to specific rates of duty, which no doubt in many instances amount to more than 50 per cent. *ad valorem*. If the ruling of the Court of Appeals is correct these goods may be made to escape the specific

duties assessable upon them as cotton cloths by embroidering the figures upon them instead of weaving them in. Although this Court has said that "the ornamentation placed upon the groundwork of the fabric does not change its character as cotton cloth," the Court of Appeals has held that the ornamentation does change its character as cotton cloth, provided the ornamentation is made with a needle instead of a shuttle.

The fact suggested by the Circuit Court of Appeals in this decision, that the embroidery paragraphs of the Act of 1883 were not before this Court when it decided the Robertson case, is wholly immaterial. That case did require a determination of the question, and that question was squarely decided by this Court, whether the ornamentation of a cotton cloth with figures took it out of the countable clauses of the statute. This Court decided that it did not. It decided that a cotton cloth ornamented with figures was still a cotton cloth for dutiable purposes, and if that be so, and if the article involved in this case was cotton cloth, then it was specially provided for in paragraph 254 of the Act of 1890, and was, therefore, not an "embroidered article not specially provided for" as described in paragraph 276.

III. The significant changes in the cotton cloth and embroidery provisions of the Tariff Act of 1890, made by Congress in the Tariff act of 1894, tend very strongly to show that the construction of the statute by the Circuit Court of Appeals is opposed to the intention of the lawmakers.

Paragraph 276 of the Act of 1894 is in almost identical language with paragraph 373 of the Tariff Act of 1890, except that the former *omits the following very significant proviso* which appeared in the latter:

"Provided, that articles of wearing apparel and *textile fabrics*, when embroidered by hand or machinery,

and *whether specially or otherwise provided for in this act*, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed."

The following paragraph (257) has been added after the provision for cotton cloths:

"The term *cotton cloth*, or cloth, wherever used in the foregoing paragraphs of this schedule, shall be held to include *all woven fabrics of cotton in the piece, whether figured, fancy or plain*, not specially provided for in this act, the warp and filling threads of which can be counted by unraveling or other practicable means."

By these two changes Congress has signified, in the most unqualified and unequivocal manner that *textile fabrics of cotton embroidered shall no longer pay the rate of duty provided for embroideries, but shall be classified as cotton cloth*, and assessed accordingly. Either of these changes would have been significant. Together they leave no doubt that the intention of Congress has been defeated by the decision now sought to be reviewed.

The opinion of the Court below suggests as to the language of paragraph 257, as of that of this Court in the case of Hedden vs. Robertson, that it refers to goods containing woven figures. But is not this a pure assumption? *Congress has not said so*, and *no good reason whatever is suggested* for assuming that they meant other than what they said. In determining whether the importation in question should be classified as cotton cloth, the Collector of the Port had only to ask the following questions, in the language of the statute, to the first three of which he would have received an affirmative and to the last a negative answer:

1. Is this a woven fabric of cotton in the piece?

2. Is it figured, fancy or plain?

3. Can the warp and filling threads be counted by unraveling or other practicable means?

4. Is it specially provided for in this act (*i. e.*, more specially than by the term cotton cloth as defined in the statute)?

Has the Court the right to *read into the statute* restrictions and qualifications which Congress has not seen fit to put there, particularly when *no reason whatever has been given for doing so.*

U. S. & Trans. Missouri Assn. not yet reported.

IV. A certified copy of the entire record of the case in the Circuit Court of Appeals, including the opinion, is filed as part of this application. There has also been filed a sample of the imported merchandise set up by the Circuit Court of Appeals, which it is hoped the Court will examine before passing on this application. Notice of the application has been given to the Attorney-General. For the reasons above stated it is respectfully submitted that a writ of certiorari should be granted.

New York, April 15th, 1897.

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